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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/432,691	05/02/95	PARKER	T ROGO-211.1-N

FELFE & LYNCH
805 THIRD AVENUE
NEW YORK NY 10022

12M2/0830

JORDAN, K.
EXAMINER

ART UNIT	PAPER NUMBER
1205	4

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED: 08/30/95

☒ This application has been examined ☐ Responsive to communication filed on ____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 months from the date of this letter.
Failure to respond within the time period will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENTS ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449 | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 23-31 are pending in the application.
Of the above claims, ____ are withdrawn from consideration.
2. ☒ Claims 1-22 have been cancelled.
3. ☐ Claims ____ are allowed.
4. ☒ Claims 23-31 are rejected.
5. ☐ Claims ____ are objected to.
6. ☐ Claims ____ are subject to restriction or election requirement.
7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____ has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under 35 USC 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. ____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit: 1205

Claims 23-31 are presented for examination.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Claims 23-26 and 28-30 are rejected under 35 U.S.C. § 103 as being unpatentable over Morton et al. (R).

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The claims appear to be drawn to a composition comprising a phospholipid such as phosphatidylcholine (PC) and/or a neutral lipid such as cholesteryl ester and/or a triglyceride. Morton et al. teaches a composition containing PC and triglycerides and/or cholesteryl ester. The claims differ from the cited reference in claiming the composition to be useful in treating endotoxemia. The claims are obvious from the cited reference because the intended utility of a composition claim does not render the composition patentable. The claims fail to patentably distinguish over the state of the art as represented by the cited reference.


Claims 27 and 31 are objected to as being dependent upon rejected base claims.

No claims are allowed.

A facsimile center has been established in Group 1200, room 3C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machine is (703) 308-4556 or 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jordan whose telephone number is (703) 308-4611.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


KIMBERLY JORDAN
PRIMARY EXAMINER
GROUP 1200

JORDAN:jld
AUGUST 24, 1995